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Office of Administrative Law Judges
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Issue Date: 10 May 2005

Case No.: 2004-LHC-00448

OWCP No.: 15-43752

IN THE MATTER OF

PROCESA G. THOMAS
Claimant

v.

NAVY PERSONNEL COMMAND/MWR
Employer,

CONTRACT CLAIMS SERVICES
Insurance Carrier.

Appearances: Jay Lawrence Friedheim, Esq.
For the Claimant

Kitty K. Kamaka, Esq.
For the Employer and Carrier

Before: Russell D. Pulver
Administrative Law Judge

DECISION AND ORDER AWARDING BENEFITS

This case arises from a claim for compensation brought under the Longshore and Harbor Worker's Compensation Act, as amended, 33 U.S.C. § 901 ("the Act") as extended pursuant to the Non-appropriated Fund Instrumentalities Act, 5 U.S.C. §8171, *et seq*. The Act provides compensation to certain employees (or their survivors) engaged in employment with Non-Appropriated Funds entities for occupational diseases or unintentional work-related injuries, irrespective of fault, resulting in disability or death. This claim was brought by Procesa G. Thomas ("Claimant") against Navy Personnel Command/MWR ("Employer") and Contract Claims Services ("Carrier") (collectively, "Respondents"), arising from cumulative trauma to her knees, which she allegedly sustained while employed by Employer. Claimant seeks compensation for her injuries under section 903(a) of the Act.

A formal hearing was held before the undersigned on September 13, 2004, in Honolulu, Hawaii, at which time all parties were afforded a full and fair opportunity to present evidence and arguments. Administrative Law Judge Exhibits ("AX") 1-6, Claimant's Exhibits ("CX") 1-33, and Respondent's Exhibits ("RX") 1-55 were admitted into the record. Claimant and her husband, Mr. Clifford Thomas, testified at the hearing. The findings and conclusions which follow are based on a complete review of the record in light of the arguments of the parties, applicable statutory provisions, regulations, and pertinent precedent.

ISSUES

The issues remaining to be resolved are:

1) The length, nature and extent of Claimant's disability.

2) Whether Claimant is entitled to compensation for temporary total disability for the period of May 15, 2003 through September 1, 2004, and for temporary partial disability thereafter due to the cumulative trauma to her left knee, under Section 903(a) of the Act.

3) Whether Claimant is entitled to disability payments for the period of February 11, 2000 through February 25, 2000 due to the injury to her right knee, under Section 903(a) of the Act.

4) Whether Claimant is entitled to reimbursement for medical services and supplies relating to the cumulative injury to her knees, for which she paid, as well as future medical services and supplies, under Section 907(a) of the Act.

5) Attorney's fees and interest on any past due benefits, if applicable.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Summary of the Evidence

Events Leading to Claimant's Work-Related Injury

Claimant was born in Lapulapu Ceba City in the Philippines. Transcript of September 13, 2004 hearing ("Tr.") at 26. She moved to Honolulu, Hawaii in 1975, at the age of 24, with her husband at the time, Michael Fisher. *See* Tr. at 29-30. Claimant began working for Employer in 1978 doing housekeeping work that included cleaning rooms and bathrooms, changing beds, and vacuuming. RX "1," p. 2; Tr. at 32. Sometime during the approximately dozen or more years Claimant worked in housekeeping for Employer, she separated from her husband, Michael Fisher and married her current husband, Clifford Thomas. *See* Tr. at 33. In 1991, Claimant began working as a cook for Employer at the Navy Marine Golf Course snack shop called the 19th Puka. CX "4"; Tr. at 33-34.

Claimant's responsibilities as a food service worker included cooking, washing dishes, mopping floors, and handling cash. Tr. at 34. Employer's description for "food service worker" characterizes the physical effort required as "medium work" that "requires exerting 20 to 50 pounds of force occasionally and/or 10 to 25 pounds of force frequently." CX "8," p. 8. As part of her food preparation duties, Claimant had to move around large containers. Tr. at 35. There was typically another person working with Claimant on her shift. Tr. at 35. On June 20, 1999, however, Claimant's work partner, who was also her supervisor, was in the back office. Tr. at 38. After washing the dishes, Claimant went to put away the dishes. Tr. at 38. Due to her short stature, Claimant needed a stepstool for this task. Tr. at 38. While putting the dishes into their place, Claimant was simultaneously reaching for a food storage container. Tr. at 39. As she was doing this, the stool flipped out from under her. Tr. at 40. Claimant struck her right knee against the dishwasher and trashcan, and landed on both knees on the floor. CX "1," pp. 1-2; Tr. at 40. Claimant hit her right knee especially hard. Tr. at 40. Claimant immediately told her supervisor, Marlene Chandler, who observed that Claimant's knees were red. Tr. at 40. Ms. Chandler had Claimant put ice on her right knee, and then made a written report of the accident that Claimant signed. Tr. at 41-42.

Summary of Medical Treatment for Claimant's Work-Related Injury

Claimant did not see a doctor immediately following the accident. *See* CX "11." The first medical exam Claimant underwent following the accident was at Portner Orthopedic Rehabilitation ("Portner Orthopedic"). She was seen by a number of doctors there, including Dr. Ming-Zu Hsieh, Dr. Mustafa Farooque, Dr. Bernard Portner, Dr. Nasar Shahid, and Dr. Ramakrishna Kosuri. *See generally* CX "11." The doctors at Portner Orthopedic initially treated Claimant's knee injury with physical therapy and anti-inflammatory medication. CX "11," p. 2. Following an MRI, Dr. Portner diagnosed Claimant with "internal derangement of [the] right knee with lateral meniscal tear." CX "11," p. 6. In response to a letter from Carrier, Dr. Portner stated that Claimant's "persistent knee pain and her diagnosis of infrapatellar tendonitis is a direct cause of the industrial injury on [June 20, 1999]." CX "11," p. 19. Based on Claimant's history, Dr. Portner could find no other cause of her knee pain. CX "11," p. 19.

Dr. Portner referred Claimant to an orthopedic surgeon, Dr. Jeffrey Lee. CX "11," p. 6; Tr. at 43-44. Dr. Lee recommended arthroscopic surgery for Claimant's right knee; he performed the operation on October 27, 1999. CX "11," p. 7. Following the surgery, Claimant continued to go to Portner Orthopedic for treatment when prolonged standing, prolonged walking, squatting, using stairs, lifting weight, or other strenuous activity aggravated her pain. CX "11," pp. 23-30. Portner Orthopedic provided Claimant with crutches, a cane, and knee braces. CX "11," pp. 2, 12; Tr. at 19. During the time that Claimant was treated for the exacerbation to her right knee injury, the doctors at Portner Orthopedic also recommended a light duty schedule at work. *See* CX "11," pp. 23, 26, 27, 31. Despite the light duty advisory, Claimant's work conditions and duties did not significantly change. *See* CX "11," p. 32; Tr. at 46-47, 75-76.

In February or March of 2000, Claimant visited an ill family member in the Philippines. Transcript of Deposition of Procesa G. Thomas, taken on July 13, 2004 (RX "54"), p. 65. While there, she visited a temple. *See* Tr. at 52. She was seen by an unnamed physical therapist shortly

after she returned to Hawaii. RX "55." Respondent sent Claimant to Dr. Gabriel Ma for an independent medical examination ("IME") on October 11, 2000. CX "22." He reported that Claimant's need for medical treatment at that time was attributable to her work-related accident. CX "22," p. 4. He similarly expressed concern about the long hours that Claimant's food service duties required her to remain standing. CX "22," p. 4.

In July 2001, Claimant began to have pain in her left knee. CX "11," p. 32. Dr. Shahid concluded that her left knee became strained because she favored her right knee for so long. CX "11," p. 32. Dr. Shahid diagnosed Claimant as having traumatic arthritis with MCL and LCL injuries to her left knee. CX "11," pp. 33-34. Due to the persistent pain in both knees, Dr. Kosuri referred Claimant to Dr. Lee again in August 2001. CX "11," p. 35. Dr. Kosuri also responded to a letter from Carrier regarding Claimant's condition by opining that Claimant had not reached maximum medical improvement ("MMI") as of August 22, 2001 and that her left knee pain resulted from the workplace injury. CX "19." Dr. Lee recommended repeat arthroscopic surgery for Claimant's right knee and reported to Carrier that Claimant's right knee pain was solely a result of the accident on June 20, 1999. CX "11," p. 38; CX "12," p. 7-8. Claimant underwent the repeat surgery on her right knee on December 8, 2001. CX "16," p. 3.

A second IME doctor, Dr. Robert Smith, evaluated Claimant on August 26, 2002. CX "23." He reported to Carrier that Claimant reached MMI on July 30, 1999. CX "33," p. 16. In Dr. Smith's opinion, Claimant's symptoms after July 1999 were caused by "preexisting degenerative changes only." CX "23," p. 17. He also opined that Claimant's left knee pain was unrelated to the workplace accident and that any current disability to Claimant's lower extremity was one-hundred percent preexisting. CX "23," p. 17. Dr. Smith characterized the preexisting condition as "chronic osteoarthritis and degenerative joint disease," which gradually worsens as the patient ages. CX "23," p. 18.

Claimant's Periods of Disability Leave and Work Following the Work-Related Accident

Following the accident, Claimant intermittently took time off from work. RX "20." She was off work and received temporary total disability benefits for the following periods of time:

- July 19, 1999 to August 2, 1999;
- October 27, 1999 to November 20, 1999;
- April 27, 2000 to September 20, 2000;
- December 8, 2001 to May 14, 2003.

Based on an average weekly wage ("AWW") of $354.89, Claimant received temporary total disability payments of $236.59 per week, or two-thirds of her AWW. Tr. at 10; RX "24." Employer controverted Claimant's claim to compensation for disability benefits on four separate occasions. RXs "8," "16," and "23." Each controversion was based on a different reason. RXs "8," "16," "23," and "27." Respondents first alleged that Claimant's injury was not documented. RX "8." Then, in February 2000, Respondents contended that Claimant's medical needs were a result of her "hiking and climbing of stairs to temples" during her trip to the Philippines. RX "16." Respondents again controverted Claimant's claim to compensation in 2002 based on the alleged lack of medical evidence to support her continuing temporary total disability. RX "23."

Respondent's last controversion was based on Dr. Smith's report that Claimant had reached MMI and no longer needed any work restrictions. *See* CX "33," p. 16; RX "40." Carrier also denied Claimant's requests for a consultation with a specialist and a left knee brace. CXs "14," "24."

During some of the periods that Claimant returned to work after the accident, Employer scheduled her for light duty. RX "20." Although Employer characterized the schedule as light, Claimant was still responsible for the same panoply of duties as before the accident. Tr. at 46-47. Subsequent to March 21, 2002, a light duty schedule was no longer available for Claimant's position. CX "17." In April 2003, Respondents informed Claimant that as a result of Dr. Smith's opinion that she no longer needed any work restrictions, she could return to her full-duty job. CX "27." "Full-duty" meant that Claimant would not be allowed to wear knee braces or use a cane. Tr. at 19-20, 54; RX "54," p. 68.

Starting in July 2003, Claimant worked with vocational rehabilitation counselors to find employment more suitable to the permanent work restrictions prescribed by Dr. Lee. Tr. at 55-57; *see* CX "20." Those work restrictions included limitations on prolonged standing, walking, pushing and pulling, and prohibitions on lifting, squatting, kneeling and climbing. CX "21." At the recommendation of the counselors, Claimant took adult education classes to try and get a high school diploma. Tr. at 57. After those courses, vocational counselors rated her education as at a seventh or eighth grade level. CX "30," p. 23. On September 1, 2004, Claimant began working as a parking lot attendant for Diamond Parking. Tr. at 59, 81. The job is primarily sedentary; Claimant sits in the booth to give out and collect tickets and only does a minimal amount of walking. Tr. at 81. Claimant earns $6.25 per hour as a parking lot attendant and works approximately 23 hours a week. Tr. at 60-61.

II. Discussion of the Law and Facts

Claimant's Prima Facie Case

In order to be compensated for an unintentional industrial injury under the Act, the claimant must first establish a *prima facie* case by proving that he suffered some harm or pain, *Murphy v. SCA/Shayne Brothers*, 7 BRBS 309 (1977), *aff'd mem.*, 600 F.2d 280 (D.C. Cir. 1979), and that an accident occurred or working conditions existed which could have caused the harm. *Kelaita v. Triple A Mach. Shop*, 13 BRBS 326 (1981). Once the claimant establishes this *prima facie* case, section 920(a) gives rise to a presumption that "[i]n any proceeding for the enforcement of a claim for compensation under this Act . . . the claim comes within the provisions of this Act." 33 U.S.C. § 920. Once the claimant proves that the claim comes under the auspices of the Act, Section 903(a) applies: "[e]xcept as otherwise provided in this section, compensation shall be payable under this Act in respect of disability or death of an employee . . ." 33 U.S.C. § 903(a).

Respondents first argue that Claimant's claim about her right knee injury is not credible because she told slightly different versions of how the injury came about. However, Claimant testified repeatedly that the accident occurred when the stool on which she was standing flipped out from under her, as she was reaching up. Some of the different versions to which

Respondents point were from Employer's injury reports. These reports, however, were not written up by Claimant but by Janice Iwane, a Personnel Management Specialist for Employer. The discordant descriptions in the reports cannot be attributed to Claimant. Claimant's version of how the accident happened is further supported by her credible testimony at the September 13, 2004 hearing. Claimant has provided sufficient evidence of the injury she suffered to her right knee, and that an accident occurred on June 29, 1999 at the 19th Puka based on her own testimony, the report filed by her supervisor, the reports of the doctors at Portner Orthopedic and the reports of Dr. Jeffrey Lee. This gives rise to the presumption under Section 920(a), that Claimant's right knee injury is covered by the Act.

Respondents also argue that the injury to Claimant's left knee is not related to her employment at the 19th Puka. The Act defines "injury" is an "accidental injury or death arising out of and in the course of employment, and such occupational disease or infection as arises naturally out of such employment or as naturally or unavoidably results from such accidental injury . . . ." 33 U.S.C. § 902(2). "[The] [e]mployer is liable for [the] claimant's entire resultant disability unless the subsequent progression of [the] claimant's condition is due to an intervening cause, in which case [the] employer is relieved of the liability attributable to the intervening cause." *Hayes v. Nat'l Steel & Shipbuilding Co.*, 7 Fed. Appx. 562, 567 (9th Cir. 2000) (quoting *Wheeler v. Interocean Stevedoring, Inc.*, 21 BRBS 33 (1988)). Claimant's treating physicians from Portner Orthopedic attributed the injury to Claimant's left knee injury to the strain from her favoring her right knee following the accident. Respondents contend, based on the notes of an unnamed physical therapist that Claimant saw, that Claimant exacerbated her knee injury by climbing the stairs to the temple she visited in the Philippines. RX "54," pp. 66-67. Claimant adamantly denies ever climbing the stairs to the temple. RX "54," pp. 66-67. Claimant testified that she told the physical therapist the opposite of what the notes indicate: that she remained in the vehicle when she visited the temple because the long flight of stairs prevented her from going down to the temple. RX "54," pp. 65-67. The undersigned finds Claimant's testimony more credible than the unverified notes of an unnamed physical therapist, and that there was no separate cause of the injury to Claimant's left knee. Therefore, the injury to Claimant's left knee is also covered by the Act.

Length, Nature, and Extent of Disability

Length of Claimant's Disability. Claimant seeks temporary total disability payments from February 11, 2000 to February 25, 2000 and from May 15, 2003 to September 1, 2004. Commencing with her employment as a parking lot attendant on September 1, 2004, she then seeks temporary partial disability benefits from that date forward. Temporary total disability pays two-thirds of the claimant's average weekly wage. 33 U.S.C. § 908(b). The extent to which the claimant's condition has improved determines whether the disability is temporary or permanent. *James v. Pate Stevedoring Co.*, 22 BRBS 271, 274 (1989); *Phillips v. Marine Concrete Structures*, 21 BRBS 233, 235 (1988); *Trask v. Lockheed Shipbuilding & Constr. Co.*, 17 BRBS 56, 60 (1985). The determination of maximum medical improvement ("MMI") is a question of fact and only medical evidence must be taken into account. *Ballesteros v. Willamette Western Corp.*, 20 BRBS 184, 186 (1988). MMI is reached when the condition of a claimant becomes stabilized. *Cherry v. Newport News Shipbuilding & Dry Dock Co.*, 8 BRBS 857 (1978); *Thompson v. Quinton Enterprises, Limited*, 14 BRBS 395, 401 (1981). MMI is determined to be

the date on which medical evidence shows that although the claimant has received a substantial amount of medical treatment, his condition will not improve in the future. *Trask*, 17 BRBS at 60. If there is any doubt as to whether the employee has recovered, such doubt should be resolved in favor of the claimant's entitlement to benefits. *Fabijanski v. Maher Terminals*, 3 BRBS 421, 424 (1976), *aff'd mem. sub nom. Maher Terminals, Inc. v. Director, OWCP*, 551 F.2d 307 (4th Cir. 1977). The Administrative Law Judge, in arriving at a decision in this matter, is entitled to determine the credibility of the witnesses, to weigh the evidence, and to draw his own inferences from it, and he is not bound to accept the opinion or theory of any particular medical examiner. *Banks v. Chicago Grain Trimmers Assoc., Inc.,* 390 U.S. 459 (1968), *reh. denied*, 391 U.S. 929 (1969); *Todd Shipyards v. Donovan*, 300 F.2d 741 (5th Cir. 1962); *Scott v. Tug Mate, Inc.*, 22 BRBS 164, 165-167 (1989); *Anderson v. Todd Shipyard Corp.*, 22 BRBS 20, 22 (1989).

Claimant has presented considerable evidence that she has not yet reached MMI for either knee from the doctors at Portner Orthopedic, Dr. Lee and Dr. Ma. Respondents' attempt to counter this evidence based on Dr. Smith's opinion fails for a number of reasons. First, the opinions of Claimant's treating physicians, Dr. Lee and the doctors at Portner Orthopedic, are entitled to special weight because they are "employed to cure and [have] a greater opportunity to know and observe the patient as an individual." *Amos v. Director, Office of Worker's Compensation*, 153 F.3d 1051 (9th Cir. 1998), *amended* 1964 F.3d 480 (9th Cir. 1999), *cert. denied* 528 U.S. 809 (1999). Dr. Lee characterized the treatment provided to Claimant at Portner Orthopedic as "conservative" and in a report dated August 21, 2002, he noted that Claimant would require further treatment for her right knee. CX "12," pp. 5, 8. Dr. Smith's opinion regarding Claimant's MMI is contrary to the weight of the other doctors' opinions, including the other IME doctor, Dr. Ma. Dr. Ma wrote that, at the time of his exam of Claimant in October 2000, Claimant had not reached MMI. Dr. Ma's evaluation only involved the trauma to Claimant's right knee, but Dr. Smith's opinion is so far off base from the other doctors' opinions that it lacks credibility. For these reasons, the undersigned finds that Claimant has not yet reached MMI.

Nature of Claimant's Disability. Claimant claims temporary, as opposed to permanent, disability. The date on which a claimant's condition becomes permanent is primarily a medical determination. Thus, the medical evidence must establish the date on which the employee has received the maximum benefit of medical treatment such that his condition will not improve. *Trask*, 17 BRBS at 60; *Mason v. Bender Welding & Mach. Co.*, 16 BRBS 307, 309 (1984); *Rivera v. National Metal & Steel Corp.*, 16 BRBS 135, 137 (1984); *Miranda v. Excavation Constr.*, 13 BRBS 882, 884 (1981); *Greto v. Blakeslee, Arpaia & Chapman*, 10 BRBS 1000, 1003 (1979). As Claimant has not yet reached MMI, the nature of her disability is temporary.

Extent of Claimant's Disability. Claimant bears the burden of proving the nature and extent of her disability. *Trask,*17 BRBS at 59. To establish a *prima facie* case of total disability, a claimant must show that she is unable to return to her regular or usual employment due to her work-related injury. *Elliott v. C & P Tel. Co.*, 16 BRBS 89, 92 (1984); *Harrison v. Todd Pacific Shipyards Corp.*, 21 BRBS 339, 342-43 (1988). Respondents argue that Claimant is able to return to her usual employment. They support this proposition based on the conclusion of Dr. Smith, who reported that Claimant could return to food service work. RX "35," p. 18. For

reasons already mentioned, the undersigned does not consider Dr. Smith's conclusions regarding Claimant's condition accurate. Claimant's treating physicians repeatedly concluded that nothing other than Claimant's work-related accident caused the injuries that limited her ability to work in food service. The permanent restrictions imposed on Claimant by Dr. Lee demonstrate that she cannot return to her usual work in food service. Those restrictions limit Claimant to light duty or sedentary work. The food service work in which she was engaged is specifically described as having "[p]hysical demands . . . in excess of those for Light Duty." *Compare Harrison v. Todd Pac. Shipyards Corp.*, 21 BRBS 339 (1988) (due to permanent restrictions against heavy lifting and excessive bending, employee cannot resume usual job as a sandblaster). Claimant has clearly proved that she is unable to return to her usual employment, and therefore made a *prima facie* case establishing total disability.

Once the claimant establishes a *prima facie* case of total disability, the burden shifts to employer to establish suitable alternate employment. An employer must show the existence of realistically available job opportunities within the geographical area where the employee resides which he is capable of performing, considering his age, education, work experience, and physical restrictions, and which he could secure if he diligently tried. If the employer meets its burden and shows suitable alternative employment, the burden shifts back to the claimant to prove a diligent search and willingness to work. *Williams v. Halter Marine Serv.*, 19 BRBS 248 (1987). If employee does not prove such, at the most his disability is partial not total. *See* 33 U.S.C. § 908(c); *Southern v. Farmers Export Co.*, 17 BRBS 64 (1985).

Respondents have met their burden of showing the existence of realistically available job opportunities in Honolulu, Hawaii, which Claimant would be capable of performing given her employment background and limitation to sedentary work. *See* RX "50." Respondents provided Claimant with vocational rehabilitation services that included contacts for available and appropriate job opportunities. Hence, for the period of time for which she seeks temporary total disability benefits, the burden is on Claimant to prove her diligence in securing these jobs and her willingness to work. Respondents contend that Claimant was neither diligent nor willing to work, as evidenced by her initial refusal to participate in the vocational rehabilitation program. Claimant evidently did not respond to the first two letters regarding vocational rehabilitation, in which the counselor wrote that if Claimant failed to respond by September 27, 2002, the counselor would assume Claimant was not interested. However, shortly thereafter, in October 2002, Claimant did express an interest in vocational rehabilitation services, and her case was reopened. There is further evidence of Claimant's diligence in securing work and of her willingness to work because she took adult education classes in an attempt to earn a high school diploma. Claimant credibly testified that she applied to all the jobs which the counselors provided her leads. It is also of note that Claimant worked for Navy MWR for nearly 25 years and was consistently rated as a good and willing worker. Despite Claimant's initial nonresponsiveness to the vocational rehabilitation program, the weight of the evidence is sufficient to meet Claimant's burden of proof regarding her diligence in securing work and her willingness to work. Accordingly, the undersigned finds that Claimant was temporarily and totally disabled from May 15, 2003 to September 1, 2004, and has been temporarily partially disabled since September 1, 2004, when she began work as a parking lot attendant. Based on Claimant's testimony that she is paid $6.25 per hour for an average of 23 hours per week, her

resulting average weekly wage of $143.75 yields a temporary partial disability compensation rate of $140.76 per week since September 1, 2004.

Disability Payments for the Period of February 11, 2000 to February 25, 2000.

Respondents paid Claimant temporary total disability benefits for several periods of time from June 1999 through May 2003. RX "24." The periods of time for which Respondents paid Claimant these benefits coincides with the off-duty advisories issued by Claimant's doctors. CX "26," *et. seq*. The only period of time for which Claimant was issued an off-duty advisory but was not compensated by Respondents was from February 11, 2000 to February 25, 2000. *Compare* CX "26," p. 9 and RX "24." Given that this is the single period of time, until May 2003, that Respondent did not compensate Claimant while she was off-duty, the undersigned finds that Claimant should have received temporary total disability payments from February 11, 2000 to February 25, 2000.

Medical Services and Supplies Relating to Claimant's Work-Related Injury

Section 907(a) of the Act provides that "[t]he employer shall furnish such medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus, for such period as the nature of the injury or the process of recovery may require." 33 U.S.C. § 907(a). Furthermore, "[w]henever the employer or carrier acquires knowledge of the employee's injury, through written notice or otherwise as prescribed by the Act, the employer or carrier shall forthwith authorize medical treatment and care from a physician selected by an employee pursuant to subsection (b)." 33 U.S.C. § 907(c)(1)(E)(2). As the undersigned finds that the cumulative trauma to both of Claimant's knees is covered by the Act, she is entitled to treatment requested by her physician and to be reimbursed for the cost of the left knee brace.

Interest

Claimant is entitled to interest on any accrued unpaid compensation benefits. *Watkins v. Newport News Shipbuilding & Dry Dock Co.*, 8 BRBS 556, 559 (1978), *aff'd in part, rev'd in part sub nom.*, *Newport News Shipbuilding & Dry Dock Company v. Director, OWCP*, 594 F. 2d 986 (4th Cir. 1979). Interest is mandatory and cannot be waived in contested cases. *Canty v. S.E.L. Maduro*, 26 BRBS 147 (1992); *Byrum v. Newport News Shipbuilding & Dry Dock Co.*, 14 BRBS 833 (1982); *MacDonald v. Sun Shipbuilding & Dry Dock Co.*, 10 BRBS 734 (1978). Accordingly, interest on the unpaid compensation amounts due and owing by the Employer should be included in the District Director's calculations of amounts due under this decision and order.

Attorney's Fees and Costs

Thirty (30) days is hereby allowed to Claimant's counsel for the submission of such an application. *See* 20 C.F.R. §702.132. A service sheet showing that service has been made upon all the parties, including the claimant, must accompany this application. The parties have fifteen (15) days following the receipt of any such application within which to file any objections.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law and upon the entire record, I find that Respondents owe Claimant temporary total disability benefits at the rate of $236.59 per week, based on the agreed AWW of $354.89, from February 11, 2000 to February 25, 2000 and from May 15, 2003 to September 1, 2004. Thereafter, commencing September 1, 2004, Respondents owe Claimant temporary partial disability benefits at the rate of $140.76 per week. The District Director shall make the necessary calculations as to exact amounts due and owing, including interest and crediting Respondents for amounts previously paid. I also find that Respondents owe Claimant for the cost of the prescribed left knee brace, which is $78.12.

It is therefore **ORDERED**

1) That Respondents, Navy Personnel Command/MWR and/or Contract Claims Services, shall pay to Claimant compensation for her temporary total disability from February 11, 2000 to February 25, 2000 and from May 15, 2003 to September 1, 2004, and shall thereafter pay claimant temporary partial disability benefits from September 1, 2004, and continuing.

2) That Respondents, Navy Personnel Command/MWR and/or Contract Claims Services, shall pay to Claimant compensation for the left knee brace the amount of $78.12 plus interest.

3) That Respondents, Navy Personnel Command/MWR and/or Contract Claims Services, shall provide Claimant with future medical services and supplies as covered by the Act.

A

Russell D. Pulver
Administrative Law Judge